

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/BG2004/000025

International filing date (day/month/year)
10.12.2004

Priority date (day/month/year)
15.12.2003

International Patent Classification (IPC) or both national classification and IPC
A61K35/78, A61K35/74, A23L1/03, A23L1/30, A23L1/305, A23C9/123, A23C9/127, A23C9/13

Applicant
PENEVA, Daniela Petrova

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITYInternational application No.
PCT/BG2004/000025

Box No. I Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
☐ a sequence listing
☐ table(s) related to the sequence listing
 - b. format of material:
☐ in written format
☐ in computer readable form
 - c. time of filing/furnishing:
☐ contained in the international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating there has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1,3
Inventive step (IS)	Yes: Claims	
	No: Claims	1-4
Industrial applicability (IA)	Yes: Claims	1-4
	No: Claims	

2. Citations and explanations

see separate sheet

**WRITTEN OPINION OF THE
 INTERNATIONAL SEARCHING
 AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/BG2004/000025

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
 citations and explanations supporting such statement**

1 Reference is made to the following documents:

- D1: BG 106 427 U (ALEKSANDROV NIKOLA G; IVANOVA PETRANKA D;
 GEORGIEV GEORGI I; PENEVA DA) 29 August 2003 (2003-08-29)
- D2: BG 106 718 A ("DAFLORN" EOOD; ALEKSANDROV NIKOLA G;
 ALEKSANDROV GEORGI N) 28 November 2003 (2003-11-28)
- D3: BG 104 513 A (ALEKSANDROV NIKOLA G; GEORGIEV GEORGI I; IVANOVA
 PETRANKA D; KOSTADINO) 31 December 2001 (2001-12-31)

2 Novelty

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of independent claims 1 and 3 is not new in the sense of Article 33(2) PCT.

D1-D3 anticipate the subject-matter of claim 1 on file.

D1 discloses a food product comprising skimmed milk, low lactose hydrolysate, D-glucose (= dextrose) and a freeze-dried monoculture of *L. bulgaricus*.

As the subject-matter of claim 1 does not exclusively relate to food products, D2 is also considered to anticipate the subject-matter of claim 1.

D3 discloses a composition comprising dry herbal extracts, dry lactic acid products fermented with *L. bulgaricus*, pectin, vitamins and dextrose.

Thus, D3 is also considered to anticipate the subject-matter of claims 3 and 4 on file.

3 Inventive Step

The question whether the application involves an inventive step is only of relevance once novelty of all independent claims has been established.

4 The following observations are also made:

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- 4.1 Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents D1, D2 is not mentioned in the description, nor are these documents identified therein.
- 4.2 Claim 4 is not correctly drafted as a use claim, dependent on independent use claim 3 (Art. 6 PCT).